IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**CRIMINAL NO. 6:03-CR-79-5**
	§	
RODNEY DEWAYNE CATO	§	

REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

On February 21, 2012, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Rodney Dewayne Cato. The government was represented by Jim Middleton, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender Wayne Dickey.

Defendant originally pled guilty to the offense of Possession of Cocaine Base, a Class C felony. The offense carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 23 and a criminal history category of VI, was 92 to 115 months. On May 19, 2004, District Judge Leonard Davis sentenced Defendant to 92 months imprisonment followed by 3 years supervised release subject to the standard conditions of release, plus special conditions to include providing the probation officer with access to any requested financial information; participation in a program of testing and treatment for drug abuse; and participate in any combination of psychiatric, psychological, or mental health treatment deemed appropriate by the treatment officer.[1] On March 13, 2008, Mr. Cato's previously imposed sentence of 92 months imprisonment was reduced to 77 months pursuant to an Order Regarding Motion for

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[1]On November 15, 2010, the conditions of Defendant's supervised release were modified to require that Defendant reside in a residential reentry center or similar facility, in the community corrections component, for a period of 120 days. Defendant was required to observe all rules and regulations of that facility and pay subsistence.

Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2). On April 13, 2009, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from unlawfully possessing a controlled substance. In its petition, the government alleges that Defendant violated his term of supervised release by testing positive for marijuana on August 27, 2009; November 10, 2009; October 6, 2010; and January 13, 2012. Fifth Circuit case law permits a court to find that illicit drug use constitutes possession.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by unlawfully using a controlled substance, a statutory sentence of no more than 2 years of imprisonment may be imposed. 18 U.S.C. § 3583(g)(1). Further, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of VI, the Guideline imprisonment range for a Grade C violation is 8 to 14 months. U.S.S.G. 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the government's petition. In exchange, the government agreed to recommend that Defendant serve 8 months imprisonment with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Rodney Dewayne Cato be committed to the custody of the Bureau of Prisons for a term of imprisonment of 8 months, with no supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be FCI Texarkana, Texarkana, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter

so the Court will present this Report and Recommendation to District Judge Leonard Davis for

adoption immediately upon issuance.

So ORDERED and SIGNED this 21st day of February, 2012.

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JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE